MALAYSIAN REPORTS

SIDEK BIN HAJI MUHAMAD & 461 ORS. v. THE GOVERNMENT OF THE STATE OF PERAK & ORS.

[F.C. (Raja Azlan Shah C.J. (Malaya), Salleh Abas F.J. & Abdoolcader J.) February 1, 1982]

[Ipoh — Federal Court Civil Appeal No. 115 of 1981]

Land Law — Trespassers — Opening of jungle land — Application for declaration that they are entitled to be in possession of land — Illegal occupation of State land — No right either in law or in equity — Application to strike out action — R.H.C. 1980 O. 18 r. 19 — National Land Code, ss. 48, 78, 341 & 425.

Practice and Procedure — Application to strike out action — R.H.C. 1980, O. 18 r. 19.

In this case some of the appellants came to Telok Anson from Kedah, North Perak and Selangor and opened up a large part of a jungle area. They were squatters and later other squatters joined them. There was a meeting between the squatters and government officers in which it was alleged that the State Director of Lands and Mines said that each settler family would receive five acres of padi land. There were also articles in the Utusan Melayu, quoting Bernama as the source, stating that the State Government was prepared to open up about 10,000 acres of land to be developed by the squatters. Eventually some of the squatters were given 3 acre lots but others including the appellants were not successful. The appellants were given notice to stop work and to vacate the area. The appellants brought an action for a declaration that they were entitled in law and in equity to be in possession of the respective lots originally pioneered, opened up and occupied by them. The respondents applied under Order 18, rule 19 of the Rules of the High Court to strike out the appellant's action on the grounds that they were squatters and that it was within the sole discretion of the State Government to alienate land. The learned judge in the High Court allowed the application and the appellants appealed.

Held: (1) it is clear beyond doubt that the appellants have no cause of action against the respondents and they cannot succeed because they are squatters. Squatters have no right either in law or in equity;

(2) illegal occupation of State land is an offence under section 425 of the National Land Code. It is well established that a court of equity will never assist squatters to resist an order of possession illegally acquired and it will never intervene in aid of wrongdoers;

(3) in this case what was said by Bernama did not bind the government. Neither did the State Director of Lands and Mines have authority to bind the Government to alienate land to the squatters;

(4) the only way to obtain State land is by way of the National Land Code. The case falls within the broad principle that where an Act creates an obligation and empowers the obligation in a specified manner, it is a general rule that performance cannot be enforced in any other manner.

Cases referred to:-

(1) *McPhail* v. *Persons Unknown* [1973] 1 Ch. 447, 456.

(2) *Grafton* v. *Griffin* 39 E.R. 130.

(3) *Hemmings* v. *Stoke Poges Golf Club* [1920] 1 K.B. 720.

(4) *Aglionby* v. *Cohen* [1955] 1 Q.B. 558.

(5) *Doe d. Rochester (Bp.)* v. *Bridges* 109 E.R. 1001, 1006.

FEDERAL COURT.

Raja Mohamed Redzuan for the appellants.

Haider Mohamad Noor, State Legal Adviser, Perak, for the respondents.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (delivering the judgment of the Court): In 1950 the appellants, numbering 377, came to Teluk Anson (now Teluk Intan) from Kedah, North Perak and Selangor and opened up a large part of a jungle area in the Mukim of Bandar, Teluk Anson. They were squatters. They now occupy an area of what is known as Kawasan Block D in a scheme known as Rancangan Seberang Perak Padi Cultivation Scheme, Kampong Gajah, in the District of Perak Tengah. Between 1950 and 1970 more and more settlers came and settled in the area. The matter became intolerable. So the State Government put up a plan to organise the settlement of these squatters. It divided the area into four blocks. Blocks A and B were allotted to the local settlers — settlers from the State itself. Block C is given to FELCRA (Federal Land Consolidation and Rehabilitation Authority). Only ex-servicemen and youths were eligible. There were already 360 settlers who had occupied the land in Block C. They were re-settled in another area — part of Block D where the appellants were already in occupation. Naturally the appellants were not happy with the new situation.

It is alleged that as a result of a meeting held in January 1977 between the pioneer settlers in Blocks C and D (including the appellants) and government officials including the District Officer, Perak Tengah, to find a solution to the problem arising from the re-settling of the 360 Block C settlers in Block D, the District Officer promised that each settler family would be given three acres of padi land subject to successful interviews to be held by the District Land Committee. The settlers did not agree to 3 acres; they wanted 5 acres. They complained to their Member of Parliament who, it would appear, could not do much for them. To make matters worse, Bernama was quoted as the source of an article in the *Utusan Melayu* issue of January 15, 1977, that the State Government proposed to open up about 10,000 acres of land at Seberang Perak to be developed by more than 1,000 persons who illegally pioneered the land in that area, and that the State Director of Lands and Mines, Haji Yang Rashidi b. Maasom, had said that each pioneer settler family would be given 5 acres of padi land. *Utusan Zaman* in an article dated January 23, 1977 also carried the same story.

It is further alleged that interviews were held subsequently; some settlers were successful and were given 3 acre lots in Block D; some others, including the appellants, were not successful. The appellants were given notice to stop work and to vacate the area.

They then filed a writ, asking for a declaration, *inter alia,* that they are entitled in law and in equity to be in possession of their respective lots in Block D, originally pioneered, opened up and occupied by them.

The respondents say that the appellants are not entitled in law and in equity to compel the State Government to give State land to them as they were and are in illegal occupation of State land. They admit that there was a meeting between the District Officer and the settlers in January 1977 but it was purely to explain to the settlers of the State Government's intention to allocate to each family an area of

3 acres subject to successful interviews. They deny that the articles in the newspapers were published by or under their authority or their servants or authorised agents.

The respondents applied under Order 18, rule 19, to strike out the appellants' action on the grounds that they are squatters, and that it is within the sole discretion of the State Government to alienate State land.

The learned judge upheld the application. He said this:

"From the facts as disclosed in the statement of claim, the defence and the affidavits, it is clear to me that the plaintiffs have no rights against the State Government. Being mere tresspassers they cannot claim title as against the State Government. Even though they have occupied the land for a number of years but they cannot acquire any title by adverse possession. Under section 48 of the National Land Code, it is clearly provided that no title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever."

In our opinion there is one issue which lies at the heart of this case. It is whether the appellants have a cause of action against the respondents. The answer is obvious. It is clear beyond doubt that they cannot succeed because they are squatters. Squatters have no right either in law or in equity. (See *McPhail* v. *Persons Unknown C.A.*[1]). It does not lie in their mouths to assert that they used and occupied the land as squatters.

Their position under the National Land Code is not dissimilar. Section 48 of the Code is against them. It says that "No title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever." Section 78 of the Code is also relevant. It says that alienation of State land shall only be effected in accordance with the provisions of Chapter 3, of Part Five and Chapter 2 of Part Eleven, and notwithstanding that its alienation has been approved by the State Authority, the land remains State land until registration under the Code. Section 341 of the Code empowers the State Authority to dispossess any squatters at any time. So the limitation period does operate against the State. What equitable right or interest can be conjured up for the squatters who have illegally occupied State land? Squatters go into possession by, or as a result of, illegal occupation of State land. Illegal occupation of State land is an offence under section 425 of the National Land Code. It is well established that a court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers. (See *Grafton* v. *Griffin*[2]). We would like to say this at once about squatters. The owner is not obliged to go to the courts to obtain an order of possession. He is entitled, if he so wishes, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the courts of law. He can even use force, so long as he uses no more force than is reasonably necessary. He will not then be liable either criminally or civilly. This however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question. The decision of the English Court of Appeal in *Hemmings* v. *Stoke Poges Golf Club*[3] manifests this principle and we would also refer to the judgment of Harman J., in *Aglionby* v. *Cohen*[4] in this respect regarding common law rights.

The appellants sought to justify or excuse their conduct by arguing before us, as they did before the learned judge, that the State government had promised them land and therefore the government should not renegue on the promise given to them. They relied on the article attributed to Bernama in the *Utusan Melayu*. They say Bernama is a government agency and therefore what it says via the newspaper binds the government. We have looked at the Pertubohan Berita Nasional Malaysia Act, 1967, and we cannot find anything in its provisions which state in categorical terms that what it says binds the government. (See particularly section 4).

Assuming what the State Director of Lands and Mines said in the *Utusan Melayu* is true, can he bind the State Government? The short answer is that he had no authority to bind the government to alienate State land to the settlers. For this a formal resolution of the State Authority is necessary. The want of authority was clearly pleaded, and is a formidable obstacle to any contention that the appellants' claim lay in estoppel.

The only way to obtain State land is by way of the National Land Code. The case falls within the broad principle that "where an Act creates an obligation, and empowers the obligation in a specified manner, we take it as a general rule that performance cannot be enforced in any other manner": (see *Doe d. Rochester (Bp.)* v. *Bridges*[5]). Likewise here in the case of landless. It cannot have been intended by Parliament in enacting the National Land Code that every person who was in need of land should be able to sue the government for it or to take the law into his own hands for the purpose. So the courts must, for the sake of law and order, take a firm stand. We can sympathise with the plight in which the appellants find themselves. But we can go no further. They must make their appeal for help elsewhere, not to us.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Raja Mohd. Redzuan & Co.*